

IN SENATE OF THE UNITED STATES.

JUNE 17, 1842.

Ordered to be printed.—To accompany bill H. R. 96.

Mr. HUNTINGTON made the following

REPORT :

*The Committee on Commerce, to whom was referred the bill from the House of Representatives (No. 96), entitled, "An act for the relief of the owners of the ship Lexington of Nantucket," report :*

That this ship sailed from Edgartown, on a whaling voyage, in November, 1836, and returned in June, 1840; that on her return the collector of Nantucket finding that she had been navigated with one more foreigner than the law allows to exempt her from the payment of a tonnage duty, exacted that duty, amounting to one hundred and ninety-nine dollars and forty-six cents, which was paid by the owners to the collector.

It does not appear that the agent of the owners by whom she was cleared, was ignorant, at the time of her clearance, of the fact, that more than one third of her crew were foreigners; but the claim for relief is made solely upon the ground that the agent intended to comply with the provisions of the law, which he believed allowed one third of the "*ship's company*" to consist of foreigners, and acting under this belief, he caused the ship to be cleared, and she went to sea. The committee perceive no reason to doubt the entire integrity of the agent in this transaction, but they feel constrained to say that the mistake was one not of *fact*, but of *law*, relating to the provisions of an act of Congress, clear, explicit, admitting of no doubt, and which it would seem, could not be misconstrued, or be considered of doubtful interpretation by those who should read it with ordinary care. The act of May 31, 1830, provides, among other things, "that from and after the first day of April next, no duties upon the tonnage of the ships and vessels of the United States, of which *the officers and two thirds of the crew* shall be citizens of the United States, shall be levied or collected." Nothing is left to construction. The language is very clear. To entitle a vessel to the exemption, not only the officers, but two thirds of the crew, must be citizens of the United States. There is not the slightest ground for the interpretation that one third of the "*ship's company*" (including officers and crew) may be foreigners. Unless, therefore, this act be virtually repealed by refunding the tonnage duties paid under the circumstances of the present case, the relief asked for ought not to be granted. By the exercise of reasonable care and diligence, the agent of this vessel might have known that she would be subject to the payment of a tonnage duty. He put an erroneous construction on a very clear law, explicit and unequivocal in its provisions, and to justify which he has shown neither precedent nor practice; and to refund the

duty would set a pernicious example, would practically repeal an existing law, and deprive American seamen of the benefits which the law was designed to confer on them.

At the present session, the committee have had occasion to express similar views to those suggested in this report, and to urge the importance of adhering to the law in its true spirit, and of rejecting applications for relief founded merely on a misconstruction of it, when the enactments were clear and free from doubt. They have not changed these views, and therefore they recommend,

That the bill be rejected.